

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

KIRSTJEN M. NIELSEN, *et al.*,

Defendants.

Case No. 1:18-cv-00068

**FEDERAL DEFENDANTS' OPPOSED MOTION FOR EXTENSION OF
TIME TO RESPOND TO PLAINTIFFS' AMENDED COMPLAINT**

Pursuant to Local Rule LR 7.8, Federal Defendants hereby move to extend the deadline to answer or otherwise respond to Plaintiffs' Amended Complaint (ECF. No. 104), filed on June 25, 2018, until 30 days after this Court rules on the pending Application for Preliminary Injunction (ECF No. 5). In the alternative, Federal Defendants request an extension until and including August 7, 2018. Plaintiffs do not oppose this alternative request, but the Perez Defendant-Intervenors do.

This Court previously granted Federal Defendants an extension until July 23, 2018, to respond to Plaintiffs' Amended Complaint. (ECF No. 117) The Court denied Federal Defendants' second extension motion without prejudice.

The parties are now completing briefing on Plaintiffs' preliminary injunction motion and the Perez Defendant-Intervenors' motion to dismiss. Briefing on Plaintiffs' motion will be completed by August 3, 2018, and that motion is set for hearing on August 8, 2018. ECF Nos. 116, 161, 270. With regard to the Perez Defendant-Intervenors' motion, pursuant to this Court's

procedures, they may file a reply in support of their motion on or before July 30, 2018, and the motion may be decided at any time.

Federal Defendants assert that both motions involve legal issues at their core. As such, the Federal Defendants' Answer will not meaningfully affect consideration of the legal issues presented in Plaintiffs' Application for Preliminary Injunction, and the responses thereto.

Additionally, Perez Defendant-Intervenors' filing of a motion due dismiss for lack of standing is precisely the type of Rule 12 motion that defers filing of an answer. *See* Fed. R. Civ. P. 12(a)(4). Further, the filing of Federal Defendants' answer has no relevance to the Perez Defendant-Intervenors' motion that is already on file and which will be fully briefed before the deadline that Perez Defendant-Intervenors do not oppose.¹

To the extent that the Court is not inclined to defer Federal Defendants' answer until after consideration of the Plaintiffs' motion for preliminary injunction, Federal Defendants maintain that the ongoing and substantial developments in this matter, including ongoing discovery and briefing, alternatively warrant a further extension of Federal Defendants' responsive deadline to August 7, 2018. Notably, if the Perez Defendant-Intervenors perceive some critical factual response as relevant to these proceedings, an August 7, 2018 will allow Defendant-Intervenors to bring such response to the Court's attention at the August 8 hearing.

A Proposed Order is attached hereto.

¹ In opposition to Federal Defendants' prior extension motion, Perez Defendant-Intervenors argued that "[w]ithout Federal Defendants' Answer, the Court will not be in a position to adequately and fairly consider Defendant-Intervenors' motion to dismiss the complaint for lack of subject matter jurisdiction. Indeed, Defendant-Intervenors have argued that there is no actual controversy between Plaintiffs and Federal Defendants due to their alignment on the core issues of DACA's legality. Federal Defendants' Answer will provide information that is crucial to resolving this question." ECF No. 171 at 1-2 (citations omitted).

Dated: July 27, 2018

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

BRETT A. SHUMATE
Deputy Assistant Attorney General

WILLIAM C. PEACHEY
Director, Office of Immigration Litigation
District Court Section

Respectfully submitted,

/s/ Jeffrey S. Robins

JEFFREY S. ROBINS

Assistant Director

Lead Attorney

U.S. Department of Justice, Civil Division

Office of Immigration Litigation

District Court Section

P.O. Box 868, Washington, DC 20044

Telephone: (202) 616-1246

Facsimile: (202) 305-7000

jeffrey.robins@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF CONFERENCE

Pursuant to Local Civil Rule 7.1(b), the undersigned counsel certifies that the Federal Defendants' counsel conferred with opposing counsel on July 26, 2018, regarding this motion. Plaintiffs indicate they do not oppose an extension until August 7, 2018. Perez Defendant-Intervenors indicate that they "oppose an extension but would not oppose, as an accommodation, an answer date of next Wednesday, August 1." New Jersey Defendant-Intervenor has not responded.

/s/ Jeffrey S. Robins

JEFFREY S. ROBINS

Assistant Director

Lead Attorney

U.S. Department of Justice, Civil Division

Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2018, I electronically filed the foregoing with the Clerk of the Court by using the Court's CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jeffrey S. Robins

JEFFREY S. ROBINS

Assistant Director

Lead Attorney

U.S. Department of Justice, Civil Division

Attorney for Defendants